ORPHANS' COURTS IN PENNSYLVANIA.

The idea of an Orphans' Court seems to have been borrowed by our ancestors from the "Court of Orphans," which was one of the peculiar privileges of the free City of London, and which had the care and guardianship of the minor children of deceased citizens, and could compel executors to file inventories of, and give security for, the estates in their hands. In our earlier Statutes the same name is used although it soon became, by a natural law, shortened to its present form; the limits of its jurisdiction were substantially alike; and its suggestion and adoption here may be accounted for by the fact that the larger portion of the colonists who came over with Penn, were citizens of London, and therefore familiar with its institutions and their advantages. It had no place in the common law. Its beginning here was but feeble. The whole scheme is embraced in a Statute of six lines passed in March, 1683. It was there enacted "That the Justice of each respective County Court, shall sitt twice every year, to inspect and take care of the estates, usages, and employment of orphans, which shall be called the Court of Orphans and sitt the first third day of ye week, in the first and eighth month yearly: That care may be taken for those, that are not able to take care for themselves." The earlier attempts to enlarge this jurisdiction were defeated by the ill-founded jealousy of the Crown; but the rapid increase in business and growing appreciation by the people of the system soon bore their natural fruit. In 1713, the jurisdiction was more precisely marked out than had theretofore been attempted, as well as enlarged, by an Act which remained in force until 1832; but in the meantime so many enlarging, yet disconnected, Acts had been passed that the jurisdiction of the Orphans' Court had become a "deplorable system of confusion," and revision a necessity. The Legislature, accordingly, in 1830, appointed a Commission to Revise. "The peculiar structure of the court," say the Commissioners in their Report, "its extensive but ill-defined sphere of jurisdiction, the magni-

tude of the interest on which it operates, the uncertanity of the code of law by which it is regulated, and its equally uncertain and insufficient practice and process, serve to surround with difficulties every attempt to frame a regular system for it." But, notwithstanding, perhaps to some extent because of these difficulties, they laid the foundation of a noble system upon which all subsequent legislation has been built. The personal and real estate of minors and of decedents are made the subjects, and minors, and the creditors next of kin, heirs, legatees and devisees of decedents, the object, of the jurisdiction of the Orphans' Court. The creditors are treated as having priority in distribution over next of kin, etc.; and, while the personal estate is the primary fund, the real estate is treated as assets for the payment of debts.

The jurisdiction of the Orphans' Court is:

(1.) Appellate, from the decision of the Register (who stands in the place of the Ordinary with enlarged powers), in granting probate of wills, and letters, and assessing collateral inheritance tax; and

(2.) Original, which is (a) exclusive in the care of minors and management of their estates; the specific performance of contracts of decedents for the sale of real estate; the control and removal of executors, administrators and guardians, and the distribution of the personal estate; the sale and distribution of the real estate for payment of debts generally, and of testamentary charges, and where it is to the interest and advantage of heirs; and over testamentary trusts given to executors *virtute officii;* and (b) concurrent with the Court of Common Pleas, in the liquidation of the claims of creditors; the partition of the real estate; and in issues *devisavit vel non;* and in testamentary trusts not given to executors *virtute officii;* but even this jurisdiction, having once rightfully attached, becomes exclusive, and is effectual for complete relief; and thus all embarassing conflicts between the two courts are happily avoided. Resort is rarely had to the Common Pleas for the exercise of its concurrent jurisdiction.

Its mode of procedure is by petition, citation, answer, etc., and, while more plastic, is assimilated as nearly as may be to

that of Chancery. Errors in final decrees may be corrected on exceptions filed in the court itself, or on appeal direct to the Supreme Court.

The organization of the Orphans' Court originally consisted of the judges of the county courts, and the business, so far as appears, was transacted directly by those judges themselves. The growth of business, however, soon made references to auditors a necessity, and this practice still prevails in the smaller districts; but in course of time it became so burthensome in the larger counties, by reason of the great expense and delay, that a provision was incorporated in the Constitution of 1873, authorizing the creation by the Legislature of separate Orphans' Courts in counties having a population of one hundred and fifty thousand and upward, and requiring the judges of such courts, except where the parties interested by writing requested otherwise, to audit accounts and make distribution. Four of such courts have been organized and the remedy has proved effectual. Thus, in Allegheny County, in 1892, six hundred and forty accounts, involving many millions of dollars in value and many difficult questions, both of fact and law, were audited and distribution made promptly, at an average record cost of $7.50 per account. Since the transaction of business has been systematized, the limit of population in counties in which separate Orphans' Courts may be organized is perhaps too small. In Allegheny County, where the population is about five hundred thousand, the business is promptly transacted by two judges; and in Philadelphia County, where the population is considerably over one million, by four.

The defects in the system of "administration of justice" through Orphans' Courts in Pennsylvania, if such really exist, are few in number and of minor importance. Thus it has been suggested that, in view of the numerous Acts which have been passed since the former, a new revision should be made; but it is replied that settled construction has made this unnecessary, and that the hazard of incompetent commissioners is too great.

So it has been suggested that separate Orphans' Courts

should have the power to call struck juries, and thus a more intelligent class be ensured to try questions of fact, instead of awarding issues to Courts of Common Pleas; but it is objected that this would simply add to the expense of settling estates, without any corresponding advantage; and that the necessity of calling in the aid of juries so seldom arises that the present law is adequate. It is conceded that a better class of jurors can be secured by that than by the present mode; and that more intelligence is required in the trial of issues *devisavit vel non* than the common run of causes at law. Its introduction, too, would provide the machinery necessary to afford "complete relief" within the court itself, and bring all questions involved in the management and settlement of estates before the judges whose training would naturally make them more familiar with them than judges who are only occasionally called upon for decision. These are advantages which far outweigh the small increase in cost and expense over the present mode. The infrequency of issues is not a valid objection if the result of the change be an improvement in the administration of justice.

It has been frequently suggested that the jurisdiction of separate Orphans' Courts should be enlarged so as to embrace the care of lunatics and their estates—and these are certainly within the declared purpose of the organization of the Orphans' Court—"that care may be taken of those that are not able to take care of themselves." The machinery of that court is admirably adapted to such care. Under the present law inquiries into lunacy are necessarily, in most cases, by reference to a commission, and more cumbersome and expensive than if heard in the mode which prevails in the separate Orphans' Courts.

So it has been suggested that jurisdiction should be enlarged so as to include divorce; but that would be the introduction of a discordant element, foreign to the purpose of the organization of the court, and the time required in taking the immense volume of testimony incidental to such proceedings would seriously interfere with the care of those who "are not able to take care for themselves."

There may have been other suggestions of improvement

made, but there is no general public desire for any change. The practical operation of the present system has been so beneficial to, and its appreciation is so high by, the people that changes should only be made as necessity demands.

This sketch, necessarily brief, is submitted in the hope of calling attention to a noble system of administration of justice.

I beg leave, also, to call attention in this connection to a decision of the Supreme Court of the United States, *Byers* v. *McAuley*, 149 U. S. 608, (1893), which seriously effects the jurisdiction of Orphans' and other similar State courts, and will inevitably lead to embarrassing questions. The questions involved grew out of (1) the claim made by first, to the exclusion of second, cousins, in the distribution of the estate of a decedent under the interstate laws of Pennsylvania; and (2) the validity of a declaration of trust made by decedent as to part of her estate; and the majority of the court held, amongst other things: (a) That the Federal Circuit Court had jurisdiction pending the distribution of the personal estate of the decedent in the State court to ascertain and award the shares of foreign claimants, but could not draw to itself the full possession of the estate, or the power of determining all the claims against or for it; and (b) That the declaration of trust was valid, and the next of kin had no interest in it.

Mr. Justice Brewer, for the majority, said: "Our conclusion, therefore, is, that the Federal Court erred in taking any action, or making any decree looking to the mere administration of the estate, or in attempting to adjudicate the rights of the citizens of the State as between themselves. The State court had proceeded so far as the administration of the estate carries it forward to the time when distribution may be had. In other words, the debts of the estate had been paid, and the estate was ready for distribution, but no adjudication had been made as to the distributees, and in that exigency the Circuit Court might entertain jurisdiction in favor of all citizens of other States to determine and award their shares in the estate. Further than that it was not at liberty to go."

It will readily be seen that the doctrine of divided jurisdic-

tion here announced must inevitably lead to serious difficulties, more especially to foreign claimants. Thus, to use an illustration given in the dissenting opinion of Mr. Justice Shiras:

"The State courts may take a different view of the will of decedent and decline to find in it a valid declaration of trust. In that event the amount of the estate would be increased by the proceeds of the sale of the real estate thus added to the fund for distribution. The citizens of States other than Pennsylvania, the extent of whose rights to participate in the fund had already been determined, and, perhaps, satisfied, under the decree of the Circuit Court, could not avail themselves of such action of the State courts. Consequently, the first cousins resident in Pennsylvania would receive larger shares than those received by the first cousins in other States, and thus inequality would arise."

So the number entitled in distribution may be fixed differently by the respective courts: The Federal Court may find ten and the State courts twenty parties, and each finding be sustained by the evidence adduced in support of it. Many other similar illustrations might be given. It is obvious that conflicts between Federal and State courts, the perplexity of a divided duty to the administrator, increase of court expense, and delay, will necessarily be brought about by this division of jurisdiction, without any corresponding advantage; and perhaps the only present remedy for these evils is that administration should be permitted to take its course through the State courts.

The decision is one which calls for serious consideration. It seem to involve a departure from the general rule that the jurisdiction of a Court of Equity, having once rightfully attached, shall be made effectual for the purposes of complete relief.

W. G. Hawkins, jr.